

Legal Update

Immobilisation of BVI Bearer Shares

The immobilisation of all bearer shares issued prior to 1 January 2005 under the International Business Companies Act was recently addressed by the BVI Financial Services Commission (the “FSC”) at its opening ‘Meet the Regulator’ conference of 2010.

The FSC were keen to stress that the end of the IBC bearer share regime was necessary to maintain the reputation of the jurisdiction as a leading financial and offshore centre.

By way of background, under the BVI Business Companies Act, 2004 (the “BC Act”), BVI Business Companies must either (1) issue registered shares or (2) comply with the BC Act’s immobilisation regime placing all bearer shares with an authorised custodian, licensed by the FSC.

Any bearer shares issued on or after 1 January 2005 had to be immediately immobilised by being placed into custody.

However, the BC Act extended a ‘grace period’ to those BVI companies which had issued bearer shares prior to 1 January 2005, allowing them time to either (1) convert their bearer shares to registered shares or (2) immobilise them.

This grace period expired on 31 December 2009 (the “**transition date**”). Any issued bearer shares which are still held in bearer

form following the transition date are now ‘disabled’.

Whilst ‘disabled’, standard shareholder rights, including the right to vote, the right to a dividend, and the right to a share in the assets of the company on liquidation are suspended.

Importantly, the BC Act provides that a disabled bearer share may not be exchanged for, or converted to, a registered share.

Owners of bearer shares who have failed to deposit their bearer shares with a custodian or to convert them to registered shares before the transition date now have the option to apply to the Court for an extension of the transition date. The Court may, at its discretion, extend the transition date by a further period not exceeding one year.

Legal Update: February 2010

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If you would like to receive further information, or more detailed guides on a range of BVI legal topics, please contact José Santos at jose.santos@forbeshare.com or your usual contact at the firm.

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